

AUDIT REPORT



SHAPIRO & INGLE, INC.
CLOSING AGENT CONTRACT
RALEIGH, NORTH CAROLINA

00-FW-222-1007

SEPTEMBER 29, 2000

OFFICE OF AUDIT, SOUTHWEST DISTRICT
FORT WORTH, TEXAS



Issue Date	September 29, 2000
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Audit Case Number	00-FW-222-1007
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TO: Charles E. Gardner
Director
Single Family Homeownership Center, 4AHH

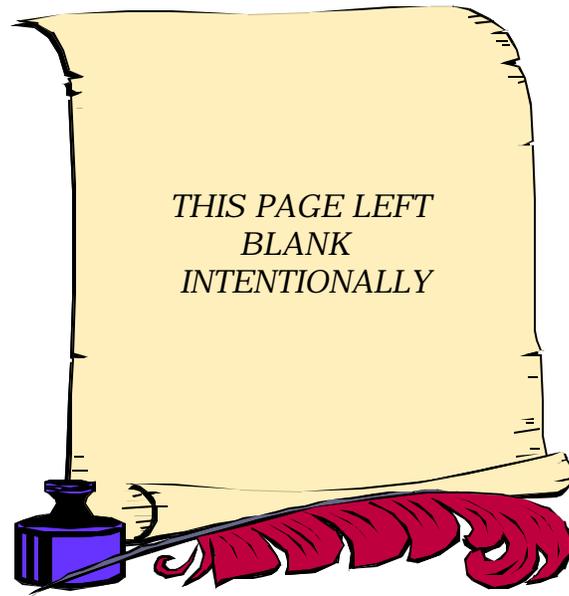
FROM: D. Michael Beard
District Inspector General for Audit, 6AGA

SUBJECT: Shapiro & Ingle, Inc. Closing Agent Contract
Raleigh, North Carolina

We performed an audit of Shapiro & Ingle, Inc. Closing Agent contract. Our attached report contains two findings.

Within 60 days, please furnish this office, for each recommendation in this report, a status on: (1) corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is not considered necessary. Also, please furnish us copies of any correspondence or directives issued related to the audit.

If you have any questions, please contact Theresa A. Carroll, Assistant District Inspector General for Audit, at (817) 978-9309.



Executive Summary

We performed an audit of the law offices of Shapiro & Ingle, Inc. (Shapiro & Ingle), a closing agent for HUD, as part of a nationwide effort to review closing agents. Our audit objective was to determine whether management controls were adequate to ensure the prevention of fraud, waste, and abuse. To meet this objective, we performed audit steps to determine whether the closing agent complied with its contract terms and conditions.

Shapiro & Ingle insufficiently performed its closing agent duties.

Overall, Shapiro & Ingle's controls were insufficient to ensure substantial compliance with its HUD contract.

Specifically, Shapiro & Ingle did not always:

- forward documents to HUD timely;
- deposit the sales proceeds timely;
- wire sales proceeds timely;
- collect an extension fee;
- record the North Carolina deeds timely;
- maintain sufficient documentation in its closing files;
- prepare a settlement statement with the correct sales price;
- calculate the tax proration correctly;
- exclude home warranty fees for investment properties; and
- keep within approved closing costs.

Shapiro & Ingle received additional \$200 per closing to perform title searches.

Shapiro & Ingle overcharged \$200 to perform title searches. HUD's closing agent contract stated that Shapiro & Ingle would clear any routine title problems and resolve any title problems prior to closing as part of the \$535 closing fee. Nonetheless, Shapiro & Ingle billed an additional \$200 for title searches and inappropriately collected up to \$138,800 for the period April 1998 through April 1999.

This report recommends that the Atlanta Homeownership Center require Shapiro & Ingle to reimburse HUD for ineligible and questioned costs. We discussed the findings in the report with Shapiro & Ingle on May 20, 1999. We provided a draft of this report to Shapiro & Ingle on August 30, 2000. They provided us with written comments on September 21, 2000, which are included in this final report.



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Abbreviations

CFR	Code of Federal Regulations
HUD	U.S. Department of Housing and Urban Development
OIG	Office of Inspector General
SAMS	Single Family Asset Management System

Introduction

Background

The firm of Shapiro & Kreisman contracted with the Department of Housing and Urban Development (HUD) on June 1, 1994, to conduct closings of HUD's single family properties. The contractor changed its name on December 8, 1997, to Shapiro & Ingle, L.L.P. (Shapiro & Ingle). Shapiro & Ingle had two closing agent contracts with HUD. These closing agent contracts were based on a geographical division of counties in the State of North Carolina. We audited closings under contract number C419S9406001 handled in Shapiro & Ingle's Raleigh office. We did not review the other contract (C419S906002). Shapiro & Ingle had offices in Raleigh and Charlotte, North Carolina. Shapiro & Ingle's Raleigh closing agent contract with HUD expired October 31, 1999.

The contract was an indefinite quantity contract that provided closing services for single family properties owned by HUD. The primary objectives of the contract were to ensure that: (1) closing occurred by date stipulated by the sales contract; (2) prompt and accurate payments of all closing costs were made; (3) net proceeds from each sale were wire transferred to HUD's account with the United States Treasury on the day of closing or the next banking day; and (4) complete and accurate closing packages were submitted to HUD within 4 working days.

To conduct a closing, Shapiro & Ingle's contract required it as closing agent to:

- Establish individual property file and maintained the file by FHA case number.
- Coordinate with purchaser, broker, and if appropriate, mortgagee, to establish a firm closing date on or before the date specified in the sales contract.
- Review title information and clear routine title issues (e.g., past due taxes, water bills, and liens) to convey clear title on all properties.
- Complete all documents necessary to provide a complete closing, including the HUD-1, deed, note, and mortgage, or deed of trust, if applicable.
- Resolve any title problems.
- Explain all closing papers and documents to the purchaser.

- Accept only cash, certified check, or money order.
- Deposit the sales proceeds, initiate the wire transfer, and obtain the bank's wire transfer confirmation on day of closing or next banking day.
- Record the deed.

According to information obtained from HUD's Single Family Acquired Asset Management System (SAMS), Shapiro & Ingle closed 694 properties from April 1, 1998, through April 1, 1999. For each closing performed, Shapiro & Ingle received \$535 from HUD.

Audit Objective

Our audit objective was to determine whether management controls are adequate to ensure the prevention of fraud, waste, and abuse.

Scope and Methodology

We obtained background information by:

- Reviewing prior closing agent audit programs.
- Participating in a teleconference with KPMG regarding its findings for the fiscal year 1998 FHA Financial Statement Audit.
- Reviewing the KPMG Briefing Paper regarding the fiscal year 1998 FHA Financial Statement Audit.

To accomplish our audit objective, we:

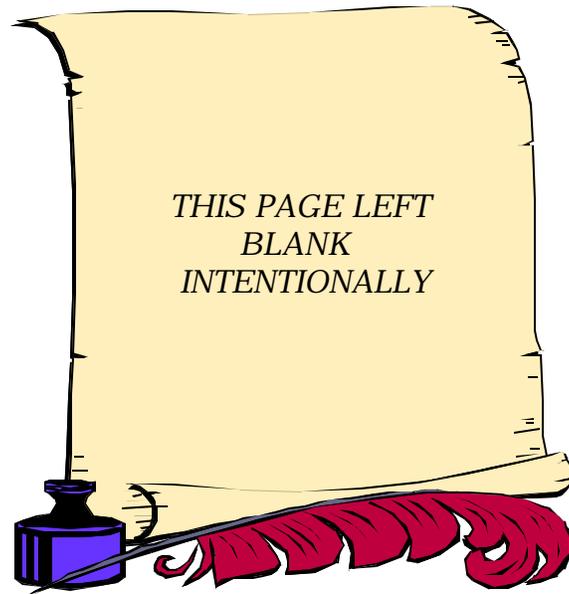
- Examined the contract and HUD's Property Disposition Handbook.
- Obtained from SAMS a listing of closings performed by Shapiro & Ingle, from which we selected our sample of closings for audit testing.
- Interviewed HUD and Shapiro & Ingle staff regarding the closing process.
- Obtained an understanding of Shapiro & Ingle's closing and accounting processes.
- Obtained and reviewed 78 closing files while on-site at Shapiro & Ingle. We originally selected files from SAMS using a random number generator. However, the SAMS data erroneously included 50 sales of Shapiro & Ingle's Charlotte Office. We replaced those files with a judgmental sample made on-site in the Raleigh Office. We tested

closing files for the following contractual and HUD handbook requirements:

- The property closed timely and, if the property did not close timely, we documented the number of days late;
- The closing files contained an extension request and approval, if applicable;
- The correct extension fee was collected, if applicable;
- Only allowable expenses were paid;
- The sales proceeds were not deposited timely;
- The correct amount was wired timely;
- The correct amount was collected for the taxing authority;
- Clear title was issued;
- The title insurance premium was not split;
- A North Carolina deed was prepared;
- The North Carolina deed was recorded timely;
- The documents were forwarded to HUD timely;
- The selling amount on the sales contract and the settlement statement were identical;
- Closing costs for the buyer were identical on both pages of the HUD-1; and
- The correct amount of extension fees were on the HUD-1, if applicable.

Audit Period and Site

We conducted the audit at Shapiro & Ingle's Offices in Raleigh, North Carolina, in May 1999 in accordance with generally accepted government auditing standards. The audit covered closings from April 1, 1998, to April 1, 1999.



Shapiro & Ingle's Controls Insufficient to Ensure Substantial Compliance with Contract

Overall, Shapiro & Ingle's controls were insufficient to ensure substantial compliance with the terms of the closing agent contract. Specifically in 20 of the 78 (25 percent) closing files reviewed, Shapiro & Ingle did not: (1) forward documents to HUD timely; (2) deposit the sales proceeds timely; (3) wire sales proceeds timely; and (4) collect an extension fee. Additionally, Shapiro & Ingle did not: (1) maintain sufficient documentation in its closing files; (2) record the North Carolina deeds timely; (3) report the correct sales price on the settlement statement; (4) calculate taxes correctly; (5) exclude home warranty fees for investment properties; and (6) keep within approved closing costs.

Documents not forwarded to HUD timely.

In 15 of the 78 (19 percent) of the closing files reviewed, the post closing documents were not sent to HUD until the 4th day after closing. The contract (Section C-2. 1) stated that the closing agent was to send the final closing package so that HUD received it within 4 working days.

Sales proceeds not deposited timely.

In 8 of the 78 (10 percent) closing files reviewed, the sale proceeds were deposited from 1 to 6 days late. The closing agent contract required Shapiro & Ingle to deposit the sales proceeds on the day of closing or the next banking day.

Sales proceeds not wired timely.

In 11 of the 78 (14 percent) closing files reviewed, Shapiro & Ingle wired the sales proceeds from 1 to 6 days late. Section C-1. 3. of the closing agent contract states that Shapiro & Ingle was to wire the sales proceeds on the day of closing or the next banking day.

Extension fee not paid.

In one instance, HUD did not receive the extension fee it was due because the purchaser did not pay the extension fee. Section C-2 v. of the closing agent contract stated that the closing agent was to administer extension fees. HUD charged \$20 per day for each day a closing was beyond the date agreed to on the sales contract. In this instance, the closing was 14 days late. Thus, because Shapiro & Ingle was not diligent in its review of the closing documents, HUD did not receive \$280 that it should have.

Recorded North Carolina deed not in file.

Of the 78 closing files reviewed, 38 (49 percent) did not contain a recorded North Carolina deed. The recorded deeds were sent directly to the purchasers. Thus, Shapiro & Ingle did not receive a copy to maintain in the file.

Files lack documentation.

Of the 78 files reviewed, 8 (10 percent) lacked documentation that a North Carolina deed was prepared, 2 (2 percent) wire confirmations, and 1 (1 percent) lacked extension requests. Section C-2. 2. i.1 of the closing agent contract stated that the closing agent was to complete all documents necessary to provide a complete closing.

Incorrect sales amount reported to HUD.

In one instance, the sales amount was changed on the sales contract making it hard to read. As a result, an incorrect amount was recorded on the HUD-1. Section C-2. 2. i.1 of the closing agent contract stated that the closing agent was to complete all documents necessary to provide a complete closing. Further, prudent business practice dictates that the correct sales price be used when preparing the HUD-1. As a result, HUD received \$1,000 less in sales proceeds than it was entitled. However, during its post closing review, HUD found the error and the purchaser paid the correct price.

Tax proration calculated improperly.

In 41 of the 78 (52 percent) of the closing files reviewed, Shapiro & Ingle incorrectly prorated the taxes. The computer program used by Shapiro & Ingle did not include the day of sale as required by the contract. Instead the computer program only calculated the tax proration through the day before the sale. Thus, the tax proration on the settlement statement was incorrect by 1 day's proration. Shapiro & Ingle agreed with this finding and agreed to take steps to correct this.

HUD charged investor's home warranty fee.

HUD paid for two home warranty fees when the purchaser was an investor. HUD allows a home warranty fee above the approved closing costs, but only if the purchaser is to be an owner-occupant. In two instances (FHA case numbers 381-273602 and 381-486089), HUD paid for the home warranty fee when the purchasers were investors because Shapiro & Ingle was not diligent in its review of the closing documents. Thus, HUD paid \$750 that it should not have paid.

HUD approved closing cost amount exceeded.

In one instance (FHA case number 381-370818), HUD paid \$25 more in attorney fees than was reasonable and customary for the area. Specifically, in the North Carolina area the reasonable and customary fee for outside attorney services was \$200. On the HUD-1 the outside attorney fee was \$225. Section B-5 of the closing agent contract stated that the closing agent shall pay only those closing costs determined to be reasonable and customary for the local real estate market area. Because the amount for the outside attorney fee was above the local real estate market area's reasonable and customary fee, the amount of the fee that was above the reasonable and customary fee should have been paid for by the purchaser.

Auditee Comments

Shapiro & Ingle responded that it maintained a level of performance that met or exceeded "substantial compliance" with its contractual obligations. Further, it responded that site reviews performed by the field office indicated that Shapiro & Ingle substantially complied with its closing agent contract. Further, whenever problems or issues were identified the matters were always promptly addressed by Shapiro & Ingle.

OIG Evaluation of Comments

We disagree with Shapiro & Ingle's comments that it was in substantial compliance and addressed issues promptly. As noted in Finding 1, our sample of 78 selected files contained an error rate of 25 percent with contract term compliance. Further, HUD's on-site reviews show a history of problems. For example, the review of August 3, 1998, noted that Shapiro & Ingle had late submissions of closing packages, errors on the HUD-1s, and late wires. Again on September 24, 1998, according to the Atlanta Homeownership Center, Shapiro & Ingle had late submissions of closing packages. Further, in May 1999, the Atlanta Homeownership Center wrote to Shapiro & Ingle that the number of HUD-1 errors and the late wires indicated a need for continued concern and attention. Because Shapiro & Ingle did not address concerns regarding errors and late wires for over 1 year, Shapiro & Ingle's management controls were insufficient to ensure substantial compliance with its closing agent contract.

Recommendations

We recommend the Director, Atlanta Single Family Homeownership Center to:

- 1A. Require Shapiro & Ingle to reimburse HUD \$750 for the home warranty fees.
- 1B. Require Shapiro & Ingle to reimburse HUD for the \$25 of outside attorney fees that were not reasonable and customary for the area and thus, in violation of the contract terms.

Further recommendations are moot because Shapiro & Ingle's contract expired October 31, 1999.

Shapiro & Ingle Overcharged \$200 per Closing to Perform Title Searches

Shapiro & Ingle overcharged HUD and/or the purchaser an additional \$200 to perform title searches. Shapiro & Ingle charged this amount in addition to its \$535 in closing fees. HUD's contract required Shapiro & Ingle to clear any routine title problems and resolve any title problems prior to closing. Thus, the contract already required title searches. Because Shapiro & Ingle closed 694 properties for the period April 1998 through April 1999, it could have been overpaid up to \$138,800¹ for performing work it was already under contract to perform.

Criteria.

Section B-2 (b) 4 of the contract stated that the contractor may not collect from any party, any fees associated with closings conducted under the contract and beyond the unit price. Additionally, Section C-2 2.c of the contract required that the contractor clear routine title problems. Further, Section C-2. 2.i of the contract stated that the closing agent is to resolve any and all title problems prior to closing.

Shapiro & Ingle's contract inclusive of all closing costs.

Shapiro & Ingle's closing agent contract stated that it may not collect from any party, any fees associated with closings conducted under the contract beyond the unit price set forth in the contract. The contract amount agreed upon by HUD and Shapiro & Ingle was \$535². However, HUD, the purchaser, or both, may have paid an additional \$200 per closing to Shapiro & Ingle for title searches. The \$200 per closing was deducted from HUD's share of the proceeds and shown on the HUD-1 or included as part of the purchaser's closing costs. Per the contract, title searches are part of obtaining the information needed to clear title problems.

¹ \$200 X 694 closings under the contract = \$138,800

² The base contract amount in 1994 was for \$475. This amount increased annually with each contract option exercised by HUD and by 1999 increased to \$535.

\$200 on HUD-1 no different from contractual required title search.

In discussions with HUD, only the foreclosed properties that did not contain title documents would be allowed the \$200 in additional title search fees. Additionally, HUD believed that the \$200 might be for a more in-depth title search on behalf of the purchaser when the mortgage lender required a lender’s policy. However, Shapiro & Ingle stated that there was no difference between a title search and what it charged \$200 for on the HUD-1. HUD allowed Shapiro & Ingle to pay \$200 in outside attorney fees as a reasonable and customary fee for legal services performed. However, if the \$200 was not used by an outside attorney, then Shapiro & Ingle charged HUD the \$200 for title search services. Thus, Shapiro & Ingle charged the additional \$200 for closings performed and could have received \$138,800 for the 694 closings performed in its Raleigh Office from April 1998 through April 1999.

The following table illustrates 14 closings for which Shapiro & Ingle charged the additional \$200 title search fee.

FHA Case No.	Buyer Paid	HUD Paid	
381-351953	\$200		
381-273602	200		
381-490399		\$200	
381-429625	200		
381-488632	200		
381-478441		200	
381-470040	188	12	
381-470503	200		
381-332220	139	61	
381-469510		200	
381-466253	200		
381-486089	200		
381-398796	200		
381-430907		200	
Totals	\$1,937	\$873	<u>\$2,800</u>

Auditee Comments

Shapiro & Ingle denies that it overcharged HUD. They state the \$200 fee was a reasonable charge for their professional service of issuing a title opinion. Shapiro & Ingle state the

minutes of a 1991 pre-bid conference allowed closing agents to charge the purchasers when a policy of title insurance was issued “through the rendering of an Attorney’s Title Opinion.”

OIG Evaluation of Comments

We disagree with Shapiro & Ingle’s comments. First, the pre-bid minutes do not discuss attorney’s title opinions. Second, during the audit Shapiro & Ingle stated that the \$200 fee was for a title search that included a preliminary title opinion and a final title opinion to the title underwriter. Shapiro & Ingle further stated that there was no difference in the work they performed for the \$200 title underwriter’s required “Attorney’s Title Opinion” and the work they performed for HUD’s “title rundown certificate” required in section J, attachment I of the closing agent contract. Although the closing agent contract allowed Shapiro & Ingle to charge for title work performed outside of its contract, the \$200 charge, according to Shapiro & Ingle, is for typing a letter. As noted in the finding, HUD allowed a \$200 fee for title searches performed by third-party attorneys when third parties required such a search. In these instances, HUD essentially pays for two title searches: one for the third party done by a third-party’s attorney and the second for HUD performed by the closing agent. When third-party attorneys were not involved in the closing, Shapiro & Ingle collected the \$200 from closing costs.

Recommendations

We recommend the Director, Atlanta Homeownership Center to:

- 2A. Require Shapiro & Ingle to reimburse HUD and/or the buyers for the \$2,800 in title search overcharges.
- 2B. Determine the number of sales closed by Shapiro & Ingle as part of its closing agent contract with HUD.
- 2C. Require Shapiro & Ingle to reimburse HUD for any amounts that Shapiro & Ingle received in excess title search fees, which could potentially amount to \$136,000³.

³ \$138,800 - \$2,800 = \$136,000.

Management Controls

In planning and performing our audit, we obtained an understanding of the management controls relevant to our audit. Management is responsible for establishing effective management controls. Management controls, in the broadest sense, include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Management Controls.

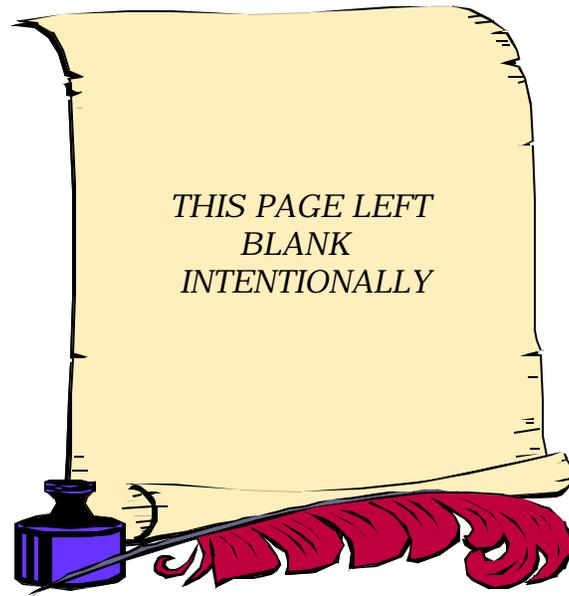
We determined the following management controls were relevant to our audit objectives:

- The closing agent contract's terms and conditions.
- HUD's Single Family Property Disposition Handbook sales procedures.
- Policies and procedures of the sales proceeds receipts and disbursements controls at the closing agent.

Significant Weakness.

A significant weakness exists if management controls do not give reasonable assurance that resource use is consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports. Based on our review, we believe the following item is a significant weakness as discussed in the report.

Shapiro & Ingle did not adhere to the closing agent contract's terms and conditions (Finding 1).



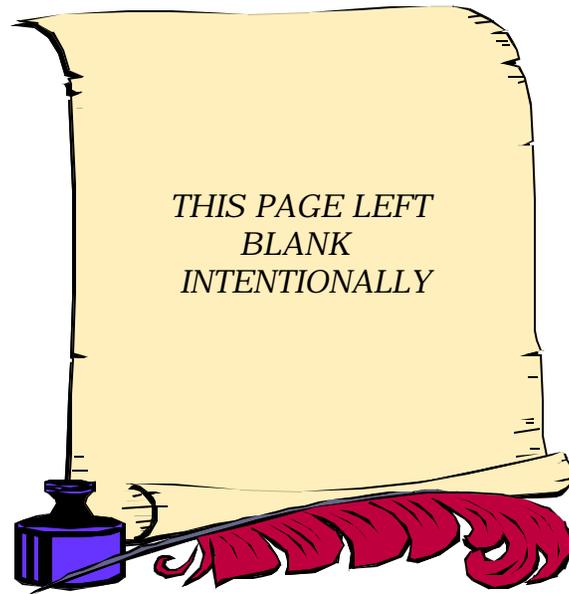
Schedule of Questioned Costs

<u>Issue</u>	<u>Type of Questioned Costs</u>	
	<u>Ineligible</u> ^{1/}	<u>Unsupported</u> ^{2/}
1A Ineligible home warranty fees	\$ 750	
1B Ineligible outside attorney fees	25	
2A Ineligible title search overcharges	<u>2,800</u>	
2C Potential excess title search fees		<u>\$136,000</u> ^{3/}
Totals	<u>\$3,575</u>	<u>\$136,000</u>

¹ Ineligible costs are costs charged to a HUD-financed or insured program or activity that the auditor believes are not allowable by law, contract, or federal, state, or local policies or regulations.

² Unsupported costs are costs questioned by the auditor because the eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs. Unsupported costs require a future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of Departmental policies and procedures.

³ This is an estimated amount based on 694 closings performed in the Raleigh Office from April 1998 through April 1999 less those shown in this report.



Auditee Comments

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SEP 22 2000

September 21, 2000

**RE: Response to Draft HUD audit report
dated August 30, 2000
C419S9406001**

Mr. D. Michael Beard, District Inspector General
US Department of Housing and Urban Development
Southwest District Office of Inspector General
819 Taylor Street
Suite 130A09
Fort Worth, TX 76102

Dear Mr. Beard,

This response is forwarded per your letter dated August 30, 2000 enclosed with the above Draft Audit Report.

The above report covered the closing agent contract for the Raleigh office of Shapiro & Ingle L.L.P. for the period of April 1998-April 1999. Shapiro & Ingle maintained an office in Raleigh, North Carolina from 1991 through the end of 1999 to perform the services required under the above referenced closing agent contract and the prior contract. Shapiro & Ingle's Charlotte North Carolina office also serviced closing agent contract C419S906002 and its predecessor during the same time period.

During the terms of the various contracts, Shapiro and Ingle always sought to diligently perform its contractual duties on behalf of HUD and its purchasers. Shapiro and Ingle maintained a professional and courteous relationship with the Greensboro, NC field office and its staff

from the first awarding of the contract in 1991 through 1998, when these duties were shifted to the Columbia, SC field office. Shapiro and Ingle also had a professional and working relationship with the Columbia office until the Marketing and Management responsibilities were transferred to In-Town Management Group in 1999.

Finding One of the above audit draft states Shapiro & Ingle's controls were insufficient to ensure substantial compliance with the contract in question. Shapiro & Ingle respectfully disagrees with this preliminary conclusion. While the contractor does not assert its performance was flawless, we do believe this firm always maintained a level of performance that met or exceeded "substantial compliance" with the requirements of the contract. The site reviews and corresponding audit reports issued semi-annually by the field offices always indicated substantial compliance with the contract requirements and satisfactory performance by Shapiro & Ingle. Whenever problems or issues were identified in the periodic reviews by HUD, these matters were always promptly addressed by Shapiro and Ingle and corrective measures were taken. The same was true whenever issues were raised in an informal manner by HUD personnel. Shapiro & Ingle was often praised by the field offices for its efforts in meeting the demands of the contract and HUD's purchasers.

In response to **Finding Two** that states that Shapiro and Ingle overcharged HUD and its purchasers, Shapiro and Ingle vehemently denies this claim. Please see the enclosed letter from Mr. Tom Paschen that more fully expounds on the basis and background for the title charges the office of Inspector General now deems inappropriate. It is clear that it was determined at a pre-bid conference in February 1991 the competing bidders could charge the purchasers when a policy of title insurance was issued through the rendering of an Attorney's Title Opinion. Please see questions numbered 2, 17, 21, and 22 of the minutes of the pre-bid meeting, a copy of which is attached to Mr. Paschen's letter.

HUD and the prospective bidders clarified the requirements under the contract and drew a distinction for allowing the closing agent to charge a reasonable fee when title insurance was required or desired. The contract states in Section C-2 2.c that the "contractor must clear routine title issues, such as past due taxes, utility liens, etc." It does not require the contractor to opine as to title or issue a title policy when requested by the purchaser, or when required by a purchaser's lender. Shapiro & Ingle charged a reasonable fee of \$200 for this professional service that only licensed attorneys can provide in North Carolina. At no point in time were the title charges ever disputed or questioned by HUD following the awarding of the respective contracts. Every file was reviewed by HUD personnel following each closing. Additionally, as stated above, the offices of Shapiro and Ingle, including the Raleigh office, were audited semi-annually by HUD personnel and the title charges were never deemed inappropriate.

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It should be stated for the record that the draft report shows the Raleigh office of Shapiro and Ingle performed 694 closings from April 1998 to April 1999. A review of the records of Shapiro and Ingle indicate that only 295 closings were performed by the Raleigh office during this period.

In closing, Shapiro & Ingle sought to diligently meet the requirements of the closing agent contract at all times. The firm was successful in substantially complying with the responsibilities undertaken and discharged its duties accordingly.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,



Grady I. Ingle

Cc: Vee Ann Stone
Joyce Cooper
Rose Ann Miller
Tom Paschen
David Kreisman
Alan Kappeler

Enclosure



LOGS Financial Services, Inc.

www.logs.com

September 18, 2000

Mr. Grady Ingle
Shapiro & Ingle, LLC.
301 South McDowell Street
Suite 408
Charlotte, North Carolina 28204

Via Facsimile (704) 333-8156 & overnight mail

Re: HUD Closing Contract C419S9406001
Inspector General draft report

Dear Mr. Ingle:

This letter is written to you in response to the above referenced Inspector General audit and ensuing draft report. I am responding at your request with any information that I may recollect or possess, since I attended the pre-bid conferences, prepared the bids and proposals, negotiated final proposals, and assisted in the implementation of the contract.

There were closing contracts issued on February 25, 1991 and in May of 1994 (the audit covered only the latter contract term, but the work was essentially the same for both contracts).

My notes reflect that I attended a pre-bid conference on February 5, 1991, which was held in HUD's Greensboro, North Carolina office. At that meeting, contract duties (Section C) were discussed at length, and specific questions arose regarding the title search requirement. The attendees were advised by one of the HUD staff members in attendance (most likely Ed Roberts), that the title review as required under the contract was an update of the title status since the date HUD acquired ownership interest. In accordance with custom and practice in North Carolina, purchasers (and their Lenders) would require a more in-depth title search, and would insist that an Attorney's Opinion Letter be issued in order that the Lender could be provided with a title insurance policy insuring the new lien position. As such, it was determined by HUD staff that the search required by a purchaser (and their Lender) would be outside the scope of the contractor's duties under the terms of the contract. HUD advised that the fee charged for that service of title examination could be included as a cost that could be paid for by any HUD closing cost allowance on Line 5 of the Sales Contract. A copy of the

P.O. Box 2189 • Mission Viejo, CA 92690 • phone: (949) 859-1000 • fax: (949) 859-1888

Page 2 of 2

Minutes of the Pre-bid conference is attached; please review questions 17, 21 and 22, as well as the related answers, as these relate directly to the issue of title searches for the buyer as a separate item from the title search required under the contract.

Subsequent to the award of the contract to the law firm, I assisted in the implementation of the contract, and as such, created a form that the Purchaser(s) were required to execute if they requested that the firm perform the additional title search. In subsequent audits of the contract, HUD staff members had opportunities to object to the practice, since there was ample paperwork in the files relative to the search. In fact, I recall conversations with staff members at HUD wherein the practice (and fee) was discussed and approved (or condoned).

While my recollection of the events surrounding this issue are only relative to the original contract issued in 1991, they apply to both contracts, since the duties were essentially the same for both contracts, and HUD never advised that they would no longer condone the practice of allowing the law firm to charge for the extended title search and Attorney's Opinion Letter.

I trust that the above information is helpful in your response to the audit report. Should you have any additional questions or require any further information, please contact me at your convenience.

Sincerely,



Tom E. Paschen
Title Operations

TEP/ns

Cc: David S. Kreisman, Esq.

Minutes of Pre-bid meeting
Closing Agent Contract
2-5-91

Introduction: Ed Roberts, Chief Property Officer/Contracting Officer; Vee Ann Stone, GTR -Government Technical Representative; Robert W. Fields, Director, Housing Management Division

Overview of Contract by Section: Vee Ann Stone, GTR
The Contract was discussed by Section. Important items were pointed out. Questions and answers were held until the end.

Questions and Answers:

1. Question: What needs to be submitted to our office from the closing agent after closing?

Answer: The Contractor must submit the following documents to the GTR: Settlement statement, Transmittal of Closing, wire transfer, copy of the recorded deed. The day the loan is closing a copy of the wire transfer needs to be FAX'd into our office. Once the deed is recorded there must be evidence placed in your file. We have accepted receipts from the clerks office or anything that you can put in your file that will have evidence of the book and page number and the date that the deed has been recorded. This will be checked on the monthly review and as the closing package comes into our office.

2. Question: In addition to the contract fees, will HUD pay up to 4% of the closing costs based on the sale price?

Answer: Yes, based upon the sales price. That can include origination fee, discount points, survey, title examination and other reasonable and customary closing costs.

3. Question: It was stated that most of these sales can be done under a new loan basis. What about financing closing costs and M.I.P.

Answer: On our properties the sales price minus the down payment is the mortgage amount plus M.I.P., that's the only thing that can be added to our mortgage amount. They cannot finance prepaids or finance other things.

4. Question: The wire transfers must be signed by a bank official, please clarify.

Answer: If the bank will present you with a computerized initiation for the wire request without a signature, that is acceptable but, if you are dealing with a small bank they may print out the wire transfer on their letterhead and it doesn't

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really say anything except that they received the money that was presented. In those situations we would like a bank official's signature and date. This will enable us to be sure that the funds have actually been requested to be wire transferred.' But if its a computerized operation and all the information is on the sheet then thats acceptable.

5. Question: I'm not sure I understand your comments about daily pick up and delivery service. Will offices in other parts of the state be involved in this very much?

Answer: Every contractor that is awarded a contract must have a courier service that they hire to pick up at their office and deliver to ours by 3:00 P.M. each day. It will be a daily necessity for your office and ours to have pick up and delivery service for our time frames to be met. The courier service is really the best means of us getting work to you and you getting work back to us.

6. Question: Do we pay for both ends of this service?

Answer: Yes, you need to include that in your contract fee.

7. Question: Is it less acceptable to use an informal courier if you are an in-town attorney or may on-staff employee perform this service?

Answer: That would satisfy the requirements just as long as an individual service or someone picks up our documents by 3:00 P.M. each day and delivers your work.

8. Question: Attachment 13 - How to review a title policy? Is this guidelines for the closing agent?

Answer: This is copied from something that is actually just for HUD's use. If you are reviewing a title policy that the mortgage company gave to us that has a tax lien on it, you would notify HUD that the lien was discovered and we will handle it. You will not be responsible to coordinate with the mortgagee.

9. Question: Is Fed X, UPS etc. acceptable services for delivery each day?

Answer: This contract requires a personal courier service to pick up and deliver each day from this end.

10. Question: In a given area where there must be 50 closings and there are only 40, your maximum-minimum says we will be paid for 50?

Answer: Yes, this is an indefinite quantity contract with a guaranteed minimum.

11. Question: Is there any problem with closings that can't be scheduled immediately for whatever reason?

Answer: The scheduling is left entirely up to the Closing Agent. The broker or lender must provide a five day notice for closing. We will support your scheduling. You will not be forced to provide one or two day closings.

12. Question: Can two attorneys bid on this service together so that the bonding can be shared?

Answer: The contract must have both names and so must the bond. As long as the bonding will cover all individuals involved.

13. Question: Would a conflict of interest problem be removed if two unrelated law offices joined in the proposal to HUD where one of the attorneys had participated as Trustee in the original foreclosure proceeding?

Answer: No, all parties of the contract must satisfy the conflict of interest requirement.

14. Question: Can you project what your volume for '91 in closings will be?

Answer: Last year we had 667 closings. Our goal this year is approximately 800 closings statewide. Presently our inventory is increasing.

15. Question: When are the proposals due in your office and when can we anticipate award?

Answer: February 28th. The whole month of March, the panel will review. On April 1, we will notify of our intent to award for contractor to provide evidence of bonding back to us. The following weeks will be for training and then on May 1st will be the effective date. You should be ready to close loans immediately after award of contract.

16. Question: Section L - Are there any special forms needed? Will there only be one contract awarded per area?

Answer: (1) No, narrative form would be sufficient. (2) Yes, one contractor per area. No multiple awards will be made in an area. The proposals will be rated per section in accordance with Section M of the contract.

17. Question: Do you have a title examination fee in mind?

Answer: No, whatever charge is normal, reasonable, and usual. We don't have a set fee.

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18. Question: Are the options to extend the contract HUD's options?

Answer: We can extend for a total of 2 years. This contract is for 1 year with 2 one year options. We will notify you of our interest to extend and you will then notify us within 10 days of your intent. We are not required to extend.

19. Question: Should a cost adjustment be figured in for the second and third year of the contract, in the proposal?

Answer: Yes, your bid will be final for the term of the contract.

20. Question: Can you compare or tell us what the last contractor was paid?

Answer: Our last contract was a sealed bid contract, so we had to accept the lowest bid. The state was divided into only two areas. This contract is not comparable so the fees will not be of any guide for this contract.

21. Question: What percent of closings will be done for buyer that will include the title search?

Answer: A large percent. It can be assumed you will do title search for the purchaser and closing but it is the decision of the purchaser who to use for the title search.

22. Question: HUD does not require title insurance?

Answer: HUD does not but the lender probably will.

23. Question: What happens if the closing needs to be held at a distance that is not convenient to the closing agent?

Answer: The contract is very vague on that, it only says the closing must be held within a reasonable distance. Its been our interpretation in the past that you should try to provide a closing at the purchaser and brokers requests within no more than 50 miles from the property. Be as convenient to purchaser and broker as possible.

24. Question: L-4 - Cost per closing statement. We will not be required to do? Can you give us any idea of the percentage or amount you will be looking for in these to see if proposal is reasonable that would show a profit or if we actually get to the point where you are having negotiations with any of us. You will be asking for these itemizations as back up - Is that correct?

Answer: No, this will only be required if we do not have adequate competition. I don't know the answer to your percentage of profit question. I believe we will have adequate competition and this will not be required.

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25. Question: Attachment 14 of Section J is missing in my contract.

Answer: Its a printing error. We will give you a copy of that form and it seems to be missing only in Area V.

26. Question: You said the fee for previous contracts was?

Answer: I'm not sure thats available under the Freedom of Information Act, if you will request that in writing, I will see what I can do to answer you.

27. Question: How is the bid factor evaluated?

Answer: The bid factor is based per closing. The dollar amount you state in Section B should be per closing.

No calls will be taken until proposals are submitted. If you need to know where to sign something, I can help you but, don't call me for clarifications on anything from this point. I will not give out any information after today. I did tell someone here that I would check on the conflict of interest question.*
***This was presented in writing and has been included in this text.

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